POLICY NOTE

THE BANKRUPTCY AND DILIGENCE (SCOTLAND) ACT 2024 (COMMENCEMENT NO. 2, TRANSITIONAL AND SAVING PROVISIONS) REGULATIONS 2025

SSI 2025/107 (C. 11)

The above instrument has been made in exercise of the powers conferred on the Scottish Ministers by section 22(2) and (3) of the Bankruptcy and Diligence (Scotland) Act 2024 ("the 2024 Act"). The instrument is laid but subject to no procedure.

Summary

Purpose of the instrument: To commence section 12 of the 2024 Act on 17 April 2025 but only for the limited purpose of enabling Scottish Ministers to make Regulations under section 147A(3), (5)(a) and (6)(b) of the Bankruptcy (Scotland) Act 2016 ("the 2016 Act") to prescribe forms that will be used in the process for the trustee to resign office on account of the debtor's failure to co-operate with the trustee. The provisions brought into force in these second commencement Regulations relate to certain modifications made to the 2016 Act and the new processes for when the debtor fails to co-operate with the trustee under sections 147A, 147B and 147C as inserted in the 2016 Act by the commencement of section 12 of the 2024 Act.

To bring in provision so sections 4, 5, 11 and 12 (in so far as it is not already in force) on 25 June 2025.

Policy Objectives

This instrument is the Bankruptcy and Diligence (Scotland) Act 2024 (Commencement No. 2, Transitional and Saving Provisions) Regulations 2025 ("the Commencement No. 2 Regulations"). Section 12 of the 2024 Act will come into force on 17 April 2025 but only for the limited purpose of enabling Scottish Ministers to make Regulations under inserted section 147A(3), (5)(a) and (6)(b) of the 2016 Act. These Commencement No. 2 Regulations will then bring into force the following sections of the 2024 Act on 25 June 2025 (including section 12 so far as not already in force). The Bill for the 2024 Act received Royal Assent on 15 July 2024 and sections 21 to 23 of the 2024 Act came into force the following day.

Section 4 (process for applying for recall of an award of sequestration)

This section makes minor modifications to sections 29 and 31 to 35 of the 2016 Act to remove ambiguities as to what the appropriate processes are when applying for recall of sequestration. The amendments clarify the following:

- where the Accountant in Bankruptcy (AiB) is not the trustee: sections 31 to 34 apply and the AiB makes their decision under section 34,

- where the AiB is the trustee and another party makes the application for recall: sections 31 and 35 apply and the AiB makes their decision under section 35, and
- where the AiB is the trustee and initiates the process for recall: section 35 applies and the AiB makes their decision under that section.

Saving Provision

- Regulation 4 of the Commencement No. 2 Regulations provides that section 4 of the 2024 Act will have no effect where before 25 June 2025, an application for recall of sequestration has been made to AiB under section 31(1) of the 2016, or AiB has notified the debtor and every creditor known to AiB under section 35(2) of the 2016 Act that AiB considers recall of an award of sequestration should be granted on the ground the debtor has paid, or is able to pay, their debts in full (including the outlays and remuneration of the interim trustee and the trustee).

Section 5 (recall of sequestration: payment of interest)

This section modifies Part 2 of the 2016 Act, which deals with the award of recall of sequestration. The modifications made by this section make the payment of interest that has accrued on the debt between the date of sequestration and the date of payment of the debt, a pre-requisite of recall, except where the debt is paid in full within 6 months of the award of sequestration.

Transitional Provision -

Regulation 3 of the Commencement No. 2 Regulations makes transitional provision in relation to section 5 of the 2024 Act and provides that where a sequestration was awarded before 25 June 2025 and the award has not been recalled then, in such cases, interest between the date of sequestration and the date of payment of the debt is not payable if payment of the debt is made in full within 6 months after 25 June 2025. If only part of the debt is paid within 6 months after 25 June 2025 then it will be a condition for recall that interest is payable on the whole of the debt (including any part of the debt already paid since the award of sequestration) in accordance with section 37A(2) of the 2016 Act as inserted by the commencement of section 5 of the 2024 Act.

Section 11 (debtor not traced: former trustee's outlays and remuneration)

This section modifies section 142 of the 2016 Act. The effect of the modifications will be that a trustee in sequestration is permitted to resign on the grounds that the debtor cannot be traced and the restriction on outlays and remuneration does not apply to outlays and remuneration already claimed. The modifications will clarify that the trustee is entitled to take outlays and remuneration from the ingathered estate up to the date of their resignation.

Section 12 (failure of debtor to co-operate with trustee in sequestration)

This section inserts sections 147A, 147B and 147C into the 2016 Act.

Section 147A introduces a new process for a trustee to apply to the AiB for authority to resign office on account of the debtor's failure to co-operate in the sequestration. This process for resigning office applies where AiB is not the trustee, the case is at least five years old (beginning from the date of sequestration of the debtor's estate),and the debtor has not been discharged from the sequestration.

Section 147B provides a process for review and appeal against decisions to grant or to refuse an application under section 147A.

Section 147C provides a process parallel to section 147A for cases where AiB is already the trustee. In cases where AiB is the trustee and the debtor stops cooperating, the case will be put on hold but the debtor would remain in sequestration and the administrative duties of AiB under sections 116(2) and 138(6) would become discretionary.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

As these Commencement No. 2 Regulations only fully bring into force various provisions of the 2024 Act, no formal consultation has been carried out in relation to this instrument. However, there has been ongoing consultation with stakeholders.

Impact Assessments

The following impact assessments were carried out as part of the Parliamentary passage of the 2024 Act:

- Business and regulatory impact assessment
- Children's rights and wellbeing screening template
- Equalities impact assessment results document
- Fairer Scotland duty impact assessment
- Island communities impact assessment screening

Financial Effects

The Minister for Public Finance confirms that no Business and Regulatory Impact Assessment is necessary as the instrument only brings into force the provisions of the 2024 Act and in itself has no financial effects on the Scottish Government, local government or on business.

Accountant in Bankruptcy
April 2025